

Public Law 105-2  
105th Congress

An Act

Feb. 28, 1997  
[H.R. 668]

To amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Airport and  
Airway Trust  
Fund Tax  
Reinstatement  
Act of 1997.

26 USC 1 note.  
26 USC 1 *et seq.*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) **SHORT TITLE.**—This Act may be cited as the “Airport and Airway Trust Fund Tax Reinstatement Act of 1997”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. REINSTATEMENT OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES.**

(a) **FUEL TAXES.**—

(1) **AVIATION FUEL.**—Subparagraph (A) of section 4091(b)(3) is amended to read as follows:

“(A) The rate of tax specified in paragraph (1) shall be 4.3 cents per gallon—

“(i) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) after September 30, 1997.”.

(2) **AVIATION GASOLINE.**—Subsection (d) of section 4081 is amended by striking the paragraph (3) added by section 1609(a) of the Small Business Job Protection Act of 1996 and by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) **IN GENERAL.**—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 1999.

“(2) **AVIATION GASOLINE.**—The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—

“(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(B) after September 30, 1997.”.

(3) **NONCOMMERCIAL AVIATION.**—Paragraph (3) of section 4041(c) is amended to read as follows:

“(3) TERMINATION.—The rate of the taxes imposed by paragraph (1) shall be 4.3 cents per gallon—

“(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(B) after September 30, 1997.”.

(b) TICKET TAXES.—

(1) PERSONS.—Subsection (g) of section 4261 is amended to read as follows:

“(g) APPLICATION OF TAXES.—

“(1) IN GENERAL.—The taxes imposed by this section shall apply to—

“(A) transportation beginning during the period—

“(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) ending on September 30, 1997, and

“(B) amounts paid during such period for transportation beginning after such period.

“(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.”.

(2) PROPERTY.—Subsection (d) of section 4271 is amended to read as follows:

“(d) APPLICATION OF TAX.—

“(1) IN GENERAL.—The tax imposed by subsection (a) shall apply to—

“(A) transportation beginning during the period—

“(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

“(ii) ending on September 30, 1997, and

“(B) amounts paid during such period for transportation beginning after such period.

“(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.”.

(c) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Subsection (b) of section 9502 is amended to read as follows:

“(b) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—

Appropriation  
authorization.

“(1) the taxes received in the Treasury under—

“(A) subsections (c) and (e) of section 4041 (relating to aviation fuels),

“(B) sections 4261 and 4271 (relating to transportation by air),

“(C) section 4081 (relating to gasoline) with respect to aviation gasoline (to the extent that the rate of the tax on such gasoline exceeds 4.3 cents per gallon), and

“(D) section 4091 (relating to aviation fuel) to the extent attributable to the Airport and Airway Trust Fund financing rate, and

“(2) the amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(n) of title 49, United States Code.”.

(2) TERMINATION OF FINANCING RATE.—Paragraph (3) of section 9502(f) is amended to read as follows:

“(3) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to taxes imposed during any period that the rate of the tax imposed by section 4091(b)(1) is 4.3 cents per gallon.”.

(d) FLOOR STOCKS TAXES ON AVIATION GASOLINE AND AVIATION FUEL.—

(1) IMPOSITION OF TAX.—In the case of any aviation liquid on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before the tax effective date and which is held on such date by any person, there is hereby imposed a floor stocks tax of—

(A) 15 cents per gallon in the case of aviation gasoline, and

(B) 17.5 cents per gallon in the case of aviation fuel.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding, on the tax effective date, any aviation liquid to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the first day of the 5th month beginning after the tax effective date.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TAX EFFECTIVE DATE.—The term “tax effective date” means the date which is 7 days after the date of the enactment of this Act.

(B) AVIATION LIQUID.—The term “aviation liquid” means aviation gasoline and aviation fuel.

(C) AVIATION GASOLINE.—The term “aviation gasoline” has the meaning given such term in section 4081 of such Code.

(D) AVIATION FUEL.—The term “aviation fuel” has the meaning given such term by section 4093 of such Code.

(E) HELD BY A PERSON.—Aviation liquid shall be considered as “held by a person” if title thereto has passed to such person (whether or not delivery to the person has been made).

(F) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or the Secretary's delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to—

(A) aviation liquid held by any person on the tax effective date exclusively for any use for which a credit or refund of the entire tax imposed by section 4081 or 4091 of such Code (as the case may be) is allowable for such

liquid purchased on or after such tax effective date for such use, or

(B) aviation fuel held by any person on the tax effective date exclusively for any use described in section 4092(b) of such Code.

(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of such liquid (determined separately for aviation gasoline and aviation fuel) held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

Applicability.

(B) EXEMPT FUEL.—Any liquid to which the tax imposed by paragraph (1) does not apply by reason of paragraph (4) shall not be taken into account under subparagraph (A).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term “controlled group” has the meaning given such term by subsection (a) of section 1563 of such Code; except that for such purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

Regulations.  
Applicability.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091, as the case may be.

(e) EFFECTIVE DATES.—

(1) FUEL TAXES.—The amendments made by subsection (a) shall apply to periods beginning on or after the 7th day after the date of the enactment of this Act.

26 USC 4041  
note.

(2) TICKET TAXES.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to transportation beginning on or after such 7th day.

26 USC 4261  
note.

(B) EXCEPTION FOR CERTAIN PAYMENTS.—Except as provided in subparagraph (C), the amendments made by subsection (b) shall not apply to any amount paid before such 7th day.

(C) PAYMENTS OF PROPERTY TRANSPORTATION TAX WITHIN CONTROLLED GROUP.—In the case of the tax imposed by section 4271 of the Internal Revenue Code of 1986, subparagraph (B) shall not apply to any amount paid by 1 member of a controlled group for transportation furnished by another member of such group. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as members of a controlled group.

(f) APPLICATION OF LOOK-BACK SAFE HARBOR FOR DEPOSITS.—Nothing in the look-back safe harbor prescribed in Treasury Regulation section 40.6302(c)-1(c)(2) shall be construed to permit such safe harbor to be used with respect to any tax unless such tax was imposed throughout the look-back period.

Approved February 28, 1997.

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LEGISLATIVE HISTORY—H.R. 668 (S. 279):

HOUSE REPORTS: No. 105-5 (Comm. on Ways and Means).

SENATE REPORTS: No. 105-4 accompanying S. 279 (Comm. on Finance).

CONGRESSIONAL RECORD, Vol. 143 (1997):

Feb. 25, 26, considered and passed House.

Feb. 27, considered and passed Senate.